

A SERIOUS
INQUIRY
INTO SOME LATE
PROCEEDINGS

In VINDICATION of the
HONOUR, CREDIT, and REPUTATION
OF THE
UNIVERSITY of OX---D,

Relative to an OFFENCE of a
Certain MEMBER of the same.

Immedicabile Vulnus
Ense recidendum est, ne Pars sincera trabatur.
OVID.

L O N D O N :

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UNIVERSITY OF OXFORD
OF THE
Honour, Credit, and Reputation
in Vindication of the

Certain MEMBER of the family.

Life expectancy at birth, 1950-54

L O N D O N :

Printed by J. G. & Co., at the "Star and Garter,"
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The Grosvenor

TO THE
Rev^d W-----M D-----N, B. D.
PRINCIPAL of M-----N-H-LL,
IN THE
UNIVERSITY of OX---D.

S I R,

IT is well known, that some Matters,
at this Time, on the *Ox---d* Tapis,
are become the Subject of Conversation
in the Great World; the Eyes of which
are fixed upon us: Rumours prevail,
and Jealousies arise, hurtful (in the Lan-
guage of our *Enemies*) to the general
Credit of our Community; and our real
Friends abroad, alarmed at an apparent
Lethargy at home, intimate their Ex-
pectations of a *Public* Knowledge of

what we are doing (rather, alas! should I say, of what *some* amongst us are desirous of doing) to ascertain the Honour, to re-establish the Dignity of *Ox---d*.

When, in Compliance with these Expectations, I had thrown together what you find in the following Pages, I was not one Moment at a loss for a proper Patron of my irksome, necessary Labour. For to whom could I so properly address myself on the Occasion, as to the Man, who, in the Vigour of active Youth, and under the Pressure of enfeebling Age, has consistently distinguished his Zeal for the Welfare of *Ox---d*? and who, on a late unhappy Incident, was, to his lasting Honour, the single *Man* of *his* Rank in the Place, who gave his Name to a reasonable, a modest, a necessary (but, alas! a fruitless) *Remonstrance* to *Power*, in order to obtain Justice: Justice! to be done to an offended Community; Justice to be executed on a lawfully accused, a self-condemning Offender!--and who could

not be frightened into a Deviation from his Purposes by the Voice of Calumny, busied in representing *that* Remonstrance as an Act of *Irregularity*, as a *Combination*, a *Conspiracy*.

This laudable Effort of yours, Sir, to evidence, in the Evening of Life, your fixed Adherence to the true Interest and Reputation of your University, recalls to my Memory some interesting Passages in *Roman* Story, where we meet with Portraits of *truly* Great Men, who, after a Retreat from the Hurry of public Business for a Series of Years, have, on some Emergencies, big with *Danger* to the Commonwealth, collected all their Strength of Mind, and forsaking those Scenes of Tranquillity, which Solitude and conscious Virtue could afford, have crush'd their feeble, tottering Limbs under the Weight of Arms, and made a willing Devotement of the little Remnant of their Lives to the Honour of their Country.

That

That you, Sir, may live, with Alacrity of Mind, equal to the Uprightness of your Intentions, to see the Success of your generous Endeavours perfected, is the earnest Desire of,

S I R,

Your most obedient,

humble Servant,

The Author.

To the R E A D E R.

THE following Sheets are intended to censure no Man. The Facts related in them are strictly true; and the World is left to judge, whether those Gentlemen, who subscribed a modest Memorial, presented to the chief Magistrate of the University, have not acted a Part for the Reputation of the said University, consistent with their Oaths to observe the Statutes and Privileges thereof.

A S E-

To the READER.

THE following Sheets are intended
to censure no Man. The Facts
related in them are strictly true; and
the World is left to judge, whether
those Gentlemen, who subscribed a no-
blest Memorial, presented to the chief
Magistrate of the University, have not
acted a Part for the Reputation of the
said University, consistent with their
Oaths to observe the Statutes and Pri-
vileges thereof.

A S R

A SERIOUS
INQUIRY

Into some late
PROCEEDINGS
OF THE
UNIVERSITY of Ox---d, &c.

IN the ushering a Pamphlet of this kind into the World, which, I hope, will be read by every one with Seriousness and Attention, it will be proper for me to state a short Case, as it was in Fact.

W. L. is accused before the proper Magistrate by *W. R.* (a Youth of Fifteen Years of Age) of certain indecent Acts, which create a Suspicion of an *Intention* in the said *W. L.* to have committed a horrid Crime.

W. L. appeareth for the first Time before the said Magistrate, and confesseth his Commission of the Facts alledged against him by
B the

the Accuser; but denieth his Intention to have committed any further Crime.

N. B. Time is taken to deliberate concerning a proper Censure on the said *W. L.* having confessed as aforesaid.—Before any Censure passed, the said *W. L.* appeareth a second time before the same Magistrate, and prays, that he may be admitted to *purge* himself by his own personal Oath, of any *Intention* in him to commit the suspected Crime.—This is allowed; his own single Bond is taken for his future Behaviour,—and he is discharged as *innocent*.

Thus far the Case is fairly and honestly represented. Upon which I cannot but observe, that this Method of Proceeding seems quite inconsistent with all Law and Reason. Can it be imagined, that the subsequent Oath of the Defendant, concerning his *Intention*, can set aside the Cogency of his previous Confession of *indecent Acts*? and if such confessed Acts were *contra bonos mores*, or a Violation of the known Laws of that Community; whereof he was a Member, 'tis plain some Censure, for such Acts confessed, must be requisite; and, consequently, Censure of a proper Nature ought to have been passed upon the Party thus confessing.

But, according to the Case stated, no Censure at all has passed upon the Offender. Upon his voluntary Oath, that he never intended to commit the Crime suspected, he is acquitted as *innocent*.—Suppose he had assaulted, beaten, and bruised the Boy, and had been accused thereof;

thereof; and, upon such Accusation, he had taken a voluntary Oath, that he did not intend to *murder* him, would he, in such Case, have been guiltless of the Assault and Battery?—If this should be granted, there would not be any Necessity, in any Community whatever, for more than one Law, in all criminal Causes, I mean the Oath of the Party accused for his own Innocence; and no legal Conviction would ever take place, if (upon such Oath) every Defendant was to be dismissed without further Inquiry.

A few cursory Observations on the Nature of an Oath of *Purgation*, I apprehend, will give every reasonable Person an Opportunity of judging, whether the Method, lately taken with the supposed Offender, was right or wrong.

In antient civil Policy, the Party suspected of any Crime (full Proof not having been made of his Guilt) was put to his *Purgation*, either * *Duello*, *Aquâ frigidâ*, vel *fervente*, in

* The Method of trying by *Duel* was instituted as a Way of consulting Providence, to learn who was the Criminal; and it was imagined, that God, thus interrogated, would not fail to declare himself in favour of the Innocent. But it happened so often, that the unjust Accuser came off victorious, that they began to be convinced, they must not prescribe to his Wisdom the Necessity of interrupting the Course of second Causes. This was giving Rules to Murder, and disguising Assassinations under Method and Measure. In the Year 891, the Kings of *Denmark* had abrogated the Proof by *Duel*, and, in lieu thereof, appointed the Proof by red-hot Iron, called the *Ordeal*.

quam nudus mittebatur, aut * *ferro candenti*.

—But such afflictive Purgations, in later Times, being justly esteemed to be Acts of *Inhumanity* (particularly as they might sometimes happen to be exercised on Persons really innocent, tho' violently suspected) the following Method of Purgation was introduced, *viz.*—

“ Ut Delatus apud Magistratum adhibeat *sep-*
 “ *tem* (vel pro qualitate pauciores) qui Testi-
 “ monium Innocentiæ illius ideò præstare pos-
 “ sunt, quia & Fide digni, & propter Vicini-
 “ tatem compertam habere possint Veritatem;
 “ Tum ipse suspectus jurabit se Crimen, *quod*
 “ *objicitur*, non admisisse, ac etiam Compur-
 “ gatores jurabunt se credere quod Principalis
 “ Jurans dicat Veritatem.”

The Oath of the *Party accused*, and that of his *Compurgators*, were necessarily concomitant. And there is not an Instance (I am satisfied) to be found, that the *First alone* was ever accepted as *plenary Purgation*; and I will further venture to affirm, that *all* such Oaths *conjunctim*, were never admitted to destroy the Testimony of positive Witnesses of the Fact objected; but they were allowed only in a Case

* The *Ordeal* was a Form of Trial, that is, of discovering Innocence from guilt, practised in *England* in the Time of *Edward the Confessor*, and down to the Reign of *Hen. III.* The Word *Ordeal*, in the original *Saxon*, signifies a *great Judgment*, formed of *Or*, which denotes *Great*, and *Deal*, or *Dele*, importing *Judgment*. The *Ordeal* was of various Kinds; but the more popular ones were those of red-hot Iron and Water; the first for Freemen and People of Fashion, the latter for Peasants.

of

of Suspicion, and in *Inopia Testium*, to support the Charge.

With regard to the Method of punishing an Offender, who should in any shape make an Attempt upon the Chastity of a Child, whether *Male* or *Female*, we find that plainly pointed out to us by the Law of old *Rome*.

“ Si quis Prætextatum, Prætextatamve (that is, a young Person, Male or Female) adsecutatus fuerit; siue cujus Pudicitia attentata esse dicetur, admitti Injuriam manifestum est.” And the best Commentators on this Passage tell us, that—“ Attentari Pudicitia alicujus dicitur, cum id agitur ut ex Pudico Impudicus quis fit.—Et qui hujusmodi Factis (aut etiam *blanda Oratione*) alterius Pudicitiam attentat, Actione Injuriarum tenetur.”—A Civil Action to be brought by the Father of the young Person thus solicited, in his *own Name*, for the Anxiety created to him by the most distant Attempt on the Chastity of his Child.

And it may be remarked further, that such Offenders were also liable to a *criminal* Prosecution, and punished according to the Degree of the Offence.—For Instance: “ Qui Puero quid Impudiciæ Gratiâ fecerit, Donum præbuerit, Pretiumve, quo is persuadeat, dederit, *Perfecto Flagitio* punitur Capite; “ *Imperfecto*, in Insulam deportatur;” or, what we term it, *Expulsion* or *Banishment*.—[Dig. 47. Tit. xi. Leg. 1. §. 2.]

Thus

Thus far I have considered the Method of *Purgation*, as directed by the *Civil* and *Canon* Law.

By the *Statute* Law of this Realm, “ It is
 “ not lawful for any Ecclesiastical Judge to
 “ tender or administer unto any Person what-
 “ soever the Oath, usually called *The Oath ex*
 “ *Officio*, or indeed any Oath, whereby such
 “ Person, to whom the same is tendered or
 “ administred, may be charged or compelled
 “ to confess or accuse, or to *purge* himself of
 “ any criminal Matter or Thing.” [13 Car. II.
 Cap. 2.]

On which Bishop *Gibson* (who supposes the
 Oath of the Party accused to be *always* and
necessarily accompanied by the Oaths of Com-
 purgators) makes the following Remark, *viz.*
 “ Where the Life and Conversation of any
 “ Person hath drawn upon him such a strong
 “ and general Presumption of Guilt, that
 “ (though he swears himself innocent) Six or
 “ Seven Persons cannot be found in a whole
 “ Parish, who believe that he swears *true*,
 “ such a one seems to be fully ripe for the
 “ Shame and Scandal of public Penance.” —
 [Cod. Jur. Eccles. Angl. Vol. 2. p. 1089.]

By a Law of the University of *Oxford* (a
 Law sufficiently promulgated, by being put
 into the Hands of every Under-graduate at
 his first Entrance) it is enacted — “ Si quis
 “ de gravi aliquo Crimine Vice-cancellario de-
 “ latys, vel suspectus fuerit — Carceri Cus-
 “ todia Causâ committatur. — Provisio tamen
 “ quod

“ quod si Fidejussores idoneos, de comparando
 “ in *Judicio*, & usque ad sententiam perma-
 “ nendo interposuerit, à Carcere liberetur.—
 “ Quod si Fidejussores dare *non* poterit, Vice-
 “ Cancellarius, vel is qui detulit, intra duos
 “ Dies Crimen in *Judicium* deducat, & quam-
 “ primum fieri potest, examinato Negotio, de
 “ eodem, secundum Juris Exigentiam, statue-
 “ tur.”

To these few Abstracts which I have made from the *Common, Statute, Civil, and Academic* Laws, I shall here subjoin a few Rules from Two celebrated Writers in *Canon Law*, which immediately relate to the Business of an *accused Party's* purging himself by Virtue of his own Oath, attended with the Oaths of his Compurgators.

1. Purgandum est non solum à Crimine, sed etiam ab *Irregularitate*.

2. Se debet publice purgare, qui apud *Pòpulum* infamatus est.

3. Corporaliter jurare debet Purgandus se immunem esse à Crimine & Irregularitate objectis.—Ejusque

4. Compurgatores corporaliter jurabunt super Sancta Dei Evangelia, quod ipsi credunt *illud* verum jurasse.

5. Post Purgationem (vel ritè) receptam aliquis ad Accusationem admittetur, si probet se nescivisse Purgationem indicendam.

6. Absolutio *privata* Criminis, ab illo Judice qui Cognitionem habet Causæ, *Pœnam* remittit, sed *Infamiam* non tollit.—*Durandus*.

Sequuntur Regulæ ejusdem Juris—De Crimi-
nibus non plenè commissis, viz.

1. De atrocibus Criminibus puniatur *Conatus* ipse ad aliquem proximum Actum deductus, ita ut per ipsum *Conantem* non steterit quin fuerit Scelus omninò *consummatum*.

2. Præter ipsius Criminis Gravitatem considerandi sunt Actus *ipsi*, ad quos fuerit *Conatus* ipse deductus, ut ex his, & simul Delicti Qualitate, Jûdex perpendat quâ Pœnâ *Conatus* puniendus sit.

3. *Conatus* ad exteriorem Operationem deductus, licet Criminis Speciem, in quam *Voluntas* ferebatur, non perfecerit, dubio procul *Delictum* est, & ad *Sceleris Audaciam* pertinet quæ Reipublicæ est perniciosa, & ideò expedit *Actum illud* non dimitti impunitum.

4. Discretus Jûdex Criminis (cogitati) non plenè commissi, moderetur secundum *Actuum* & Criminum Distinctionem. (Ex. Gr.) Qui alterius Portas fregerit, Furti Causâ, quod minimè potuit peragere, profecto hic punietur Pœnâ ordinariâ, non *Furti*, sed *Effractoris*.
——*Covanurviast*.

How safely even the voluntary Oath of the Person, who is called the *Offender*, could be received by the *Magistrate*, and admitted in Mitigation of an Offence, ratified by a positive Oath of the Deponent, I must own, is something beyond my Capacity to account for, and the Reader may determine it, if he can. The Statute of *Car. II.* (before quoted) directly forbids it; and 'tis reasonable to think, that,
should

should this Mode of Punishment be allowed as sufficient to clear a Man's Reputation, or to screen him from the Gallows, the *Tyburn Trade* would soon be at an End, and 'Squire *Catch*, instead of *Lace* (like *Solomon's Sluggard*) would soon be cloathed in nothing but Rags.

One Consideration more, concerning the admitting the supposed Offender to his Oath of *Purgation*, will give the Reader further Light into the Equity of the Proceedings in the present Case.

When the Person, accused of a *great* Offence, was permitted to swear, that he did not intend to commit a *greater* Offence, and, upon such Oath, was discharged from any Punishment due to the *great* Offence previously confessed, the Magistrate, acting in such a Case, must be supposed to proceed either as a *Temporal* or as an *Ecclesiastical* Judge, both which by Law he is.—If he acted under the former Qualification, and proceeded as a *Temporal* Judge or a *Civil* Magistrate, it is well known, that the common Law of the Land will not permit any *Civil* Magistrate to discharge a Criminal upon his swearing a thousand Times to his Innocence (even of the *whole* with which he is charged) whilst there subsists any sort of external Evidence of his Guilt.—And if the Magistrate acted in this Case as an *Ecclesiastical* Judge, it is altogether as notorious, that all such are, by the Statute Law of the Land, forbidden

to require or administer any such Oath of *Purgation*. [13 Car. II. Ch. 2.]

Should it be pleaded further, in order to justify the Proceedings in this Particular, that the Magistrate thought himself authorized by the University-Statute [*De iis qui majorum Criminum Suspicionem tenentur*] to administer such Oath, I must reply, that, if that Statute was ever Law, which may reasonably be doubted (as it was one of those procured by Archbishop *Laud* in the Time of *Charles I.* and never ratified by Act of Parliament) yet, however, by the subsequent Statute of *Charles II.* [Chap. 12. Sect. 14.] it was actually repealed; and therefore this pretended *Purgation*, and the Discharge upon it, must be condemned by every reasonable Man, and be judged both of them to be against Law.

May it not (nay, will it not) be asked likewise, how the Offender could be lawfully dismissed as *Innocent*, and the Weal of the University be secured hereafter, by taking nothing but his own single Bond of Five hundred Pounds for it? The Statute of the University (above referred to) requires *Fidejussores idoneos*, and, upon not producing such, the Magistrate himself may (and certainly, for the sake of the Community ought) within two Days to bring the Offence *in Judicium*, and proceed according to the Exigency of the Law.

Has this Method then been observed with regard to the supposed Offender? Has it been brought

brought into any Court? Has the *Accused* had any Opportunity given him of acquitting himself with Honour, or the University of punishing him (if guilty) with Justice? Have any Articles been exhibited against him for offending *contra bonos mores*? or have the Depositions of the Boy upon Oath been ever laid, in a judicial and legal Manner, before the Members of the Venerable House of Convocation?—No:—and yet he is acquitted!

It may possibly be admitted, even by the Advocates for a general Acquiescence in the *Little* (perhaps the Reader will say the *Nothing* legal or effectual) already done in Consequence of a regular Information, laid before the first Magistrate, against a *violently suspected* Offender, that the Person accused is either *innocent* or *guilty* of certain heinous Indecencies, where-with he is charged.

If he be *innocent*, an open and public Inquiry into the Nature of his supposed Offences, and into the Degrees of Evidence against him, by a legal, a statutable, and indeed the only competent Authority, *viz.* the House of *Convocation*, will place his Innocence in such a Light, that, for *his sake alone*, such a judicial Inquiry ought to take place.

There is something, like an Objection, offered to this Mode of Reasoning by some certain *Umbraculists*—That the Dignity, Honour, and Reputation of *Alma Mater* is more effectually preserved by a gentle Correction, given in her Closet to a naughty Son, than by a Pub-

lication of *his* Disgrace, and of her *own*, which must be the necessary Consequence of the Measures contended for by a small inconsiderable Number of indiscreet, *mutinous Remonstrants*, who call for an Inquiry into the Behaviour of the Person accused, in the House of Convocation.

To this Objection it is easy to reply, and I don't doubt but the Reader is before-hand with me,—That the *Offence* given is at this Time as public, as any subsequent and equal Punishment on the Offender can possibly make it : And further, that such Offence is swelled to a marvellous Bulk, by a Rumour concerning this Closet-Animadversion on a peccant Son of *Alma Mater* : How he was permitted to *swear*, that he was not *quite* so bad as Fame reported ;—How he gave his own Word and Honour, nay, even his own *Bond*, that he would be much *better* for the Time to come ; and how the fond and easy Mother relied on this same Promise, Oath and Bond :—And all was well.—

But it may be replied with somewhat more Seriousness, that the Dignity, Honour, and Reputation of the University, in the Judgment of every wise and impartial Man, must be preserved by a resolute and public Exertion of her Discipline on every proper Call,—and by such Measures *only*.

A Closet-Lecture may skreen an offending Son, and for a Time cover the Mother's Shame ; but it cannot retrieve ; it cannot ascertain her Honour ; it cannot fix her Reputation out of the

the Reach of *Censure*. This is only to be done by *public* Animadversions on Offenders ; and it is well known, that “ *De majoris momenti Negotiis, ac præcipuè de amovendis Academicæ Dehonestamentis, in Convocatione Doctorum, Magistrorum, Regentium, & non Regentium (prout de antiquo fieri consuevit) deliberetur & determinetur.*”

Will not the Neglect of thus legally calling a supposed Offender to Justice, justify a modest *Memorial* and *Remonstrance* from Persons who are Members of Convocation, and who, without any *Party-Foolery*, think themselves bound, by the sacred Tye of an Oath, to observe the Statutes, Privileges and Customs, and to maintain the Credit, Dignity, and Safety of the University?

Is it not a Matter greatly to be lamented, that the Violence of a Spirit of Opposition should be carried to so absurd a Pitch, that the least Degree of Attention should be afforded to those Persons, who have been induced to represent this *Memorial* (to many individual Members offered, and by many signed) as a *mutinous, seditious, and insolent* Procedure ; as an Attempt, on the Part of a *few* private Men, to dictate to the *Magistrate*, how he ought to exercise his Jurisdiction ; as an high Irregularity, an Act of Violence, a Sort of Conspiracy, to be, for the Peace of the Community, discouraged, rejected and censured?

An Animadversion more severe could not well have taken place in the Case of a tumultuous

tuous Address from the lowest Subjects to Men in the highest Authority; from Apprentice-Boys to a Lord Mayor, or from Attorneys or Scriveners to a Lord Chancellor.

But cool, dispassionate, and disinterested Men, I hope, will consider this Procedure in a quite different Light: At least it is desired, that they will, with Patience, hear the *Subscribers* of this Memorial affirm, that they considered it as a *modest*, a *reasonable*, and a *necessary* Requisition; that they blamed no individual Academic for having refused (on Motives to them unknown) his Hand to it; and that they hoped, at least, to have escaped the *Censure* (if not to have conciliated the *Esteem*) of others for the Part which they acted in it.

Those Gentlemen, therefore, who saw the Memorial (some having, with a becoming Zeal, refused even to look into it) were requested to consider it as *deliberate Counsel*, or *Advice* offered to a worthy and (they hoped) a well-intentioned Magistrate, not by a Rabble of mutinous, dissatisfied, and uninterested Men, but by his *Co-judices*; each of them on the Bench with him in the Supreme Court of *Convocation*: A modest, a reasonable Intimation à *Paribus ad Parem*, the Voice of every Individual on that Bench being of equal Weight and Import,—Each Subscriber to this Counsel or Advice claimed a Right to speak his Opinion, that they, and all other Members of Convocation, ought to be convened——“*ad judicia-*
“*liter deliberandum de Negotio majoris momenti,*

“ & quod ad universam spectat Academiam;” more especially, as I observed before, “ De a-
 “ movendis Academicæ Dehonestamentis, & de
 “ quibuscunque ad Statum, Dignitatem, & In-
 “ columitatem Universitatis spectantibus.” [Stat. Tit. x. Sect. 2.]

This, I have Reason to think, will enough vindicate a Measure which gave some Men Offence, tho’ supported by the known Laws of this Community, under the Direction of this Statute.—The Cases of *Thistle—te*, *S—n*, and *Dun—be*, were originally laid before the Convocation; the Decrees of which House, in each of these Cases, stand on Record in the Convocation Books, and are well remembered by the Gentlemen who have been thus severely censured for a modest Declaration of their Opinion, viz. That a Similitude of Offence called for an Uniformity in *Judgment*, and, in Case of Conviction, for an Equality in *Punishment*.

For the Reader’s further Satisfaction, and to convince the World, that the Memorial (ill-spoken of by none but such as had not seen it) contained nothing in it indecent, irreverent, or impertinent; nothing which the Gentlemen, who subscribed it, had any Reason to be ashamed of, or to fear the Consequences of having done it, I have here added a true and literal Copy of it, which, I doubt not, will be read by unprejudiced Persons with some Degree of Pleasure, and not reflect any Dishonour on the Remonstrants themselves.

To the Rev^d J---N B---NE, D. D.

V---E-C---R of the U----Y of OX--D.

“ **T**HE Memorial, Remonstrance, and
 “ Request of us, whose Names are
 “ hereunto subscribed, being Doctors in the
 “ several Faculties of Divinity, Law and Phy-
 “ sic, Masters of Arts of the said University,
 “ and respectively Members of the Venerable
 “ House of Convocation in the same, setteth
 “ forth,—That whereas for some time last
 “ past, an unfortunate and evil Rumour hath
 “ taken place, not only within the Precincts
 “ of our University, but in many Places at a
 “ Distance from the same, and especially in
 “ the Metropolis of this Kingdom, that, on or
 “ about the First, Second, Third or Fourth Day
 “ of *March* last past, an Information was duly
 “ laid before you the Vice-Chancellor afore-
 “ said, by *W. R.* of *M---n-College*, in the said
 “ University, Chorister, a Youth reputed to be
 “ in the Sixteenth Year of his age, against *W.*
 “ *L.* Doctor in Physic, then a Student of *C---*
 “ *C---b* in the said University, and a matricu-
 “ lated Member of the same, concerning cer-
 “ tain *indecent, immoral*, and shameful Facts,
 “ by him the said *W. L.* committed ; which
 “ Facts were supposed by the said Informant
 “ to have a manifest Tendency towards the
 “ horrid and unnatural Crime of S---y: A
 “ Crime !

“ Crime! as we verily believe, before this supposed Offence given, unsuspected in this our University. And——

“ Whereas, on such supposed Information as aforesaid, no open and notorious Inquiry (at least none which hath reached our Knowledge) hath hitherto been made, and no judicial and public Proceedings have been had thereupon:——And whereas the Dignity, Credit, Reputation and Welfare of this whole University do, in our Judgments, call aloud for some such judicial, open and public Inquiry into the Facts aforesaid,

“ We therefore, having earnestly at Heart the Honour of our said University, and being desirous that the supposed Offender, or Party accused, should have the Satisfaction of being openly and publicly *acquitted*, if *innocent*, of Offences laid to his Charge, or as publicly and openly *condemned*, and (according to the Exigency of the wholesome Laws and Statutes of our said University) censured and punished, if it shall judicially appear (which, we hope, will not be the Case) that he is guilty of the said Offences, do hereby unite in an humble and earnest *Request* to you, Mr. V—C——r, that you would be pleased, in such manner as to you shall seem to be proper, right and just, instantly to lay the whole Matter of this grievous Scandal to our said University, and the Informations aforesaid to you given (if any

D

“ such

“ such there were) before the Supreme Court
 “ in this Place, *viz.* the Venerable House of
 “ Convocation, consisting of Doctors in their
 “ several Faculties, and Masters of Arts, Re-
 “ gent and Non-Regent, to the end that a full
 “ and satisfactory Inquiry may be made into
 “ the same by the said Venerable House.

“ And because we are taught by our Statutes
 “ [Tit. x. Sect. 11. §. 7.] to observe, that
 “ Matters of this Nature and Kind are more
 “ commodiously and more expeditiously con-
 “ ducted by a select Number, than by a whole
 “ Body of Men, we therefore further pray,
 “ that, under your Direction, the Proctors of
 “ the University, for the Time being, may be,
 “ on this melancholy Occasion, required, by
 “ Virtue of their Offices, to nominate and ap-
 “ point a competent Number of Delegates,
 “ consisting of Members of the said Venerable
 “ House of Convocation, to inquire into, hear,
 “ and examine all and singular the Circum-
 “ stances of the Case aforesaid, and to form
 “ a proper Judgment thereupon, *cum Relatione*
 “ *ad Domum Convocationis, & Approbatione*
 “ *ejusdem.*”

Is it not surprising, that so modest, so decent
 and so reasonable a Request (a Request ! calcu-
 lated for nothing but the Honour and Credit of
 the University) should be misrepresented and ma-
 ligned as mutinous and seditious ? “ But we live
 “ in a futile Age,” as an eminent Author speaks
 in

in another Case, “ in which many not only
 “ act without Regard, but in a direct Opposi-
 “ tion to the most important Interest of those
 “ Communities of which they are Members :”
 In an Age !—when *modestly* speaking the Truth
 is termed transgressing Law, and asserting with
 Decency the Necessity of punishing Wicked-
 ness, is stiled, by unreasonable Men, sowing
 the Seeds of Sedition.

But let me return from the Observations of
 other Communities to the particular Point re-
 lating to our own Body.

When a Rumour first prevailed, that an In-
 formation of some Facts, of a criminal Nature
 and Tendency, had been laid before the Chief
 Magistrate of this Place, against a Foundation-
 Member of C——C——b; Did not the local
 Magistrates of that College require, and, upon
 such Requisition, receive from such chief Ma-
 gistrate an authentic Copy of such Informations
in Scriptis? On the Sight of such Copy, did
 they not cause it to be notified to the Person
 accused, that such Informations against him
 were of so heinous a Nature, that it was ex-
 pected by them, that he should instantly resign
 his Freehold in that Society (which was in fact
 an Expulsion) and remove his Person from the
 same, with an Intimation, that if he complied
 not with such their Requisition, they would
 proceed to a formal Expulsion of him from
 their College? On such Intimation, did not
 the accused Person in Fact resign his Place,

and remove himself from it? Had not such Procedure the Appearance of a constrained Amotion or Expulsion? or, at least, was it not the very same in Effect? Did not such Amotion take Place by reason of some alledged, proved, confessed, or violently suspected Crime or Irregularity? Was such a Motion, which deprived the Party amoved of a Freehold in that College, just, regular, and legal; calculated to save the Honour of that particular Society?—If so;—Let me interrogate a little further:

Was not the Party accused a Member likewise of the larger Community—the University; and is he not in fact such at this Time? Is not the Honour therefore of the whole Body to be provided for, as well as that of one College? Are not the Magistrates of that one College themselves Members likewise of the larger Community? And, as such, are they not under the same Obligations to unite with other well-intentioned Academics, in vindicating, by every justifiable Measure, the Honour of the University, as they were to do Justice to their own particular Society by any such Measure?

Did the original Information import *Quid Academicæ* (as well as *Æ—C—*) *Dehonefamenti*? If it did so,—then some other Inquiries occur, easy to be made, and too evident to be denied,

Doth

Doth it not, by Statute, appertain to the House of Convocation, whereof the Magistrates of every private College are sworn Members, *deliberare & determinare de amovendis Academicæ Dehoneſtamentis, & Gradu privandis?*

Doth any Member therefore of the Convocation act out of Character, in promoting a public Inquiry for ſo laudable a Purpoſe? And, laſtly, Is any ſuch Member, in Law, Reason, or Common-Senſe, to be cenſured for making a modeſt Application to the Chief Magiſtrate, praying him to ſet on foot ſuch regular, ſtatutable, and neceſſary Inquiry?

The Memorial, it is hoped, ſpeaks for itſelf, and needs no Defence; and thoſe Gentlemen who ſigned it, conſcious of their Innocence, were glad to have it laid before the Chief Magiſtrate, not as an insolent Direction to him in Point of Practice, but to ſpeak their Abhorrence of all ſuch Indecencies, and to diſcharge their Conſciences reſpecting the Statutes and Diſcipline of the Univerſity. With this View it was preſented with all poſſible Decency and Reverence. If the Facts in it ſhould be found fairly ſtated, the Preſentors hope the *Requeſt* in it would be thought reaſonable, and that the Offender would have the Opportunity given him of acquitting himſelf with Honour, or the Univerſity of cenſuring him with Juſtice. That they deſired nothing more, than that the Cauſe ſhould be laid before

fore the Venerable House of Convocation, pursuant to the Direction of the Statutes of the Place. Whether the Magistrate should think proper to indulge them in this Request, they knew not; they had done their Duty in endeavouring to obtain it, and hoped, that he would do his, for the Honour and Reputation of the University to which they belonged.

It was received with all the external Marks of Civility and Respect; a Promise was made them, that it should be communicated to his Brethren, the Heads of Houses, and that an Answer should then be given to the Remonstrants Request.

Whether our outward Behaviour is always a true Sign of our inward Sentiments, I must leave to the Determination of those Philosophers, who have argued *pro* and *con* on that obsolete Point, *An Voces significant Conceptus?* I am very well assured, that there is a Possibility of one Man's breaking his Promise to another; and 'tis justly remarked, that too close an Application to the Study of Casuistry has sometimes led Men into the Principles and Practice of Jesuitism. By which means, thro' subtle (but not honest) Distinctions, the Force of a Covenant has been avoided, which an undesigning Man would never have suspected to have been in its own Nature frangible.

But not to talk of other Men, let me return to the Point in hand. Has any Answer, favouring

vouring the modest and reasonable *Petition* of these Gentlemen, been given them? Has the Offence, since the Presentation of the Memorial, been laid before the House of Convocation? And is not the Offender encouraged publicly to appear, and to walk with Insolence within the Walls of our *Sion*?

Upon the whole then, any *Academic* of the Age of Forty, who has been honoured with Four Degrees, under the Influence of unnatural Lust, becomes so forgetful of himself, and of the Honour of the University, of which he is a Member, as to *kiss* and *sooth*, *bug* and *fondle* with, *treat*, *cajole* and *bribe* a Boy of Fifteen Years of Age; when he *talks* and *acts* with shameful Lewdness in the Presence of such a Boy, *alone* with him, without any positive Violence offered, or any *actual Attempt* to commit a most horrid and capital Crime; are such Acts of Indecency, when proved or *confessed*, sufficient to denominate the Offender to be *Academicæ Debonestamentum*? or are they not?—If the Answer be affirmative (and sure it cannot be otherwise) nothing is more evident, by the Laws of the University, than that the *Censure*, *Amotion*, or *Degradation* of such an Offender doth wholly and solely appertain unto the Supreme Court of the University, the House of Convocation,—and to *that* alone; and that no Authority, inferior to *that*, can decree, enforce, and execute a statutable and adequate Punishment of such *Offences*.

But

But I would willingly hasten to a Conclusion of this Inquiry: I shall therefore subjoin a few authentic Extracts from the local Statutes of the University, one Case of Facts fairly stated, with an Opinion upon it, which has had the Approbation of some Gentlemen eminent in the Law, and, I doubt not, will be approved by the best Common Lawyers of the present Time, under whose Inspection it shall happen to fall.

EXTRACTS

EXTRACTS

FROM THE
LOCAL STATUTES

OF THE

UNIVERSITY of OX---D.

Viz. { Tit. x. Sect. II. §. I. *Enume-*
A. { *ratio Negotiorum quæ ad Do-*
 num Convocationis spectant.

“ QUandoquidem Negotia majoris Mo-
“ menti cum majore Deliberatione sunt
“ tractanda; & quæ ad Universam spectant
“ Academiam, ab Universis approbari con-
“ gruum est; *Statutum est*, ut in Convoca-
“ tione Doctorum, Magistrorum Regentium
“ & Non-regentium (prout de antiquo fieri
“ consuevit) de majoribus Negotiis ac totum
“ Universitatis Corpus tangentibus *deliberetur*
“ & *determinetur* — Veluti de Legibus &
“ Statutis

“ Statutis rogandis, vel etiam abrogandis, in-
 “ *terpretandis*, moderandis, &c. &c. &c.—
 “ de amovendis Academiae Dehonestamentis
 “ & Gradu privandis;—Denique de qui-
 “ buscunque ad Statum, Dignitatem & Inco-
 “ lumitatem Universitatis spectantibus.”

B. { Tit. xxi. Sect. 12. *De iis qui ma-*
jorum Criminum Suspicionem te-
nentur.

“ **S**I quis vel publicâ Famâ vel privatâ cu-
 “ jusdam Informatione de gravi aliquo
 “ Crimine apud Vice-Cancellarium delatus
 “ fuerit, nec ad convincendum & condemnan-
 “ dum Probationes sufficiant: Ejusmodi ta-
 “ men sint, ut ex iis vehemens Suspicio oria-
 “ tur, potest Vice-Cancellarius *Reo Purga-*
 “ *tionem* indicare, & si in eo defecerit, per-
 “ inde ac de Convicto statuere: [cavebit ta-
 “ men ne quempiam ad Purgationis Pericu-
 “ lum admittat, quem in Perjurium ruitu-
 “ rum crediderit, aut quem *fontem* esse judi-
 “ caverit.]

“ Quod si per Modum Purgationis proce-
 “ dere non libeat Cautionem tamen fidejusso-
 “ riam sufficientem, de Pace conservanda, &
 “ quoad Crimina objecta, honestè in Poste-
 “ rum se gerendo, interponere, priusquam di-
 “ mittat, coget & compellet.”

C.—

C.— Stat. 13. Car. II. Chap. 12. §. 4.

“ **I**T shall not be lawful for any Archbishop,
 “ Bishop, Vicar-General, Chancellor,
 “ Commissary, or any other Spiritual or Ec-
 “ clesiastical Judge, Officer, or Minister, or any
 “ other Person, having or exercising Spiritual or
 “ Ecclesiastical Jurisdiction, to tender or admi-
 “ nister unto any Person whatsoever the Oath,
 “ usually called the Oath *ex officio*, or any
 “ other Oath, whereby such Person to whom
 “ the same is tendered or administered, may be
 “ charged or compelled to confess or accuse,
 “ or to *purge* him or herself, of any criminal
 “ Matter or Thing, whereby he or she may
 “ be liable to *Censure* or *Punishment*.”

C A S E.

AN Information was laid before the V—
Ch— or of the University of O—d,
by *W. R.* a Chorister of *M—* College in that
University, aged Fifteen Years, against *W. L.*
a Doctor of Physic, of — College in the said
University, concerning certain Facts of a hor-
rid Tendency, viz. *Quod dictus W. L. dictum*
W. R. adfectatus fuerat, cum blanda & lasciva
Oratione sollicitaverat, Suaviloquentiâ, Bassis,
Donisque attentaverat (Pudendum suum Virile
denudans, dictoque W. R. palam exhibens) alia-
que Impudicitiae Gratiâ, fecerat, ut dictus W.
R. ex Pudico fieret Impudicus.

N. B. No positive Violence, or actual At-
tempt on the Person of the Informer al-
leged against the Party accused.

W. L. was called (or voluntarily appeared)
before the Magistrate, to whom this Informa-
tion was made, and, on Examination, con-
fessed all and singular the indecent Facts spe-
cified in the Information, but denied any In-
tention or Design on his Part (*si modo se dedisset*
Pars

Pars sollicitata) to have carried such Acts of Indecency to any further or more criminal Length.

As no further judicial Animadversion was had concerning this Matter for the Space of more than Two Months, and as such Remissness and Delay gave Offence, the Party accused was called a second Time before the Chief Magistrate for further Examination, and was then permitted, on his own personal Oath, to assert the Innocence of his Intentions, as to the horrid Crime suspected, and to give his own Bond of 500 *l. de bene se gerendo in posterum*: which done (his previous Confession of indecent and shameful Acts notwithstanding) he was, as far as lay in the personal Power of the Magistrate before whom he was primarily accused, discharged and dismissed from any further Prosecution.

N. B. A Number of Doctors and Masters of Arts, all Members of the Convocation, being highly offended at the private, summary, and, as they apprehend, illegal Proceedings of the Magistrate on this Information, have presented unto him a respectful and modest Remonstrance and Request, praying, that the Accusation preferred against *W. L.* may, as is directed by the Statute *A.* be laid before the House of Convocation, *ut ibidem de Negotio tanti Momenti seriò deliberetur & determinetur juxta dicti Statuti Exigentiam.*

To

To which Remonstrance the Reply was,
Causam fuisse & esse conclusam.

Qu. 1. Is not this a Case, such as by Statute *A.* ought to be laid before the Convocation, *i. e.* the Supreme Court of the University, which alone has the Power of *Gradu privandi aliquem*?

Qu. 2. Is there any apparent Inconsistency between Statute *A.* which directeth peremptorily, that such a Case as this shall have the Judgment of the whole House, and Statute *B.* which seems to grant to the V. C. alone a Power to convict, punish, or discharge those *qui majorum Criminum Suspicionem tenentur*?

Qu. 3. If there be such Inconsistency between the Statutes *A.* and *B.* which of those Laws ought to take place in the present Case? Or was it in the Option of the Magistrate to proceed on which he thought proper?

Qu. 4. Was not Statute *B.* which was made in the Time of Charles I. and which seems to allow of a personal Oath of Purgation by the Party accused, in fact repealed, and made of none Effect by the Statute of the Land C. above recited and enacted? [13 Car. II.] And if so,

Qu. 5.

Qu. 5. Can there remain any Doubt, whether the Proceedings against *W. L.* the Party accused, should be had under the Direction of the Statute *B.* or under that of the Statute confessedly now in Force, viz. *A?*

Qu. 6. Admitting Self-Purgation on Oath to be now lawful (*quod non est admittendum*) was *W. L.* sufficiently and plenarily purged of the Acts of *Indecency* and *Lewdness*, specified in the Information, by his swearing, that he intended not the Commission of the horrid Crime of *S—y?* —Were not such Acts of Lewdness criminal in themselves? and ought he to have been discharged without a legal Censure for such confessed Offences?

Qu. 7. Would not such Offences have been sufficient for an Indictment at Common Law for a Misdemeanour? And would a Plea of “no Intention to commit greater Offences,” have availed any thing in Arrest of Judgment against him, for that whereof he was guilty?

Qu. 8. What would have been the Punishment for such Offences at Common Law?

Qu. lastly,

Qu. lastly, If the Magistrate hath acted contrary to Law, on the pretended Statute *B.* may not that Error be (and ought it not to be) corrected by further Proceedings to be had in the Supreme Court of the University, *viz.* the Convocation? And what legal, reasonable or justifiable Measures can be pursued to induce the Chief Magistrate (without whose Consent nothing can be moved in the House) to lay the Matter before the Supreme Court, to the solemn Discharge or Condemnation of the Offender, according to the Laws of the Community whereof he is a Member?

O P I N I O N.

I AM of opinion that the V. C. has not done his Duty in this Case, and, in effect, has done nothing at all. The Oath *ex Officio*, or purgative Oath, is illegally taken, as it is flatly against the Law of the Land. Every By-Law, or private Statute of any Corporate Body, ought to be agreeable to, or, at least, not inconsistent with, the public Law of the Realm. The Rule, *Leges posteriores priores abrogant*, holds where the Question is of the Validity of Laws enacted by the *same Supreme Authority*; *a fortiori* will it hold, where the Law *repealing* is made by a higher Authority than that by which the Law *repealed* was made.

As to that Part of Statute B. which may be supposed to be still in Force, the Magistrate has neither conformed with the Words nor Meaning of it. The Words *Fidejussoria Cautio* can be understood only of Suretyship, *viz.* where some *Strangers* are bound for the good Behaviour of the Offender. But the Magistrate has taken no such Security from any, but the Offender himself: [usually called *Satisfactio*.] As Part therefore of what the Magistrate has done was against an express Law, and as the Residue of what he has done is warranted by no Law, his Acts amount to nothing.

If indeed he had taken Security for the Offender's good Behaviour of some sufficient Security, it might be made a Question, whether he could be obliged to act in the Affair as V. C. any further,——The Oath of Purgation, mentioned in Statute *B.* is, 'tis true, repealed, but nothing more. That Statute is repealed only as far as it is inconsistent with the Laws of the Land; and so far as it avoids that Inconsistency, it must, I think, remain untouched and unaffected.——The Purgation-Oath taken by the V. C. is undoubtedly void; and as to what he should do more, agreeably to the Direction of the Statute *B.* *valeret quantum valere posset.*——For he that does what he has a Power to do, and more, his Act is void only for what he might not do, and good for the Residue.—I say, *a Power to do*; for I am inclined to think the V. C. only would have the proper Cognizance of the Offender in Question.

The Statute *A.* is a general Statute: The Statute *B.* a particular one, and therefore not repugnant to the other; because an Exception may fairly be taken out of a general Law, without contradicting it, as all that could be inferred from such a seeming Contrariety would be: The general Statute extends to all Cases it can extend to, where Provision is not otherwise more particularly made: But enough of this, which no way relates to the present Question—Since the V. C. has not only comply'd with the Statutes, but has, in effect, not acted at all. And methinks the present (if any) Case should
require

require sufficient Sureties to be bound for the Offender's good Behaviour, as the usual Difficulty and Expence of procuring such would be some Sort of Punishment for his, at least, outward Affront put upon the Laws of the Society, of which he is a Member, and as it would be a satisfactory Security in Case of his offending for the future: But the accepting the Offender's own Bond for his good Behaviour, could, I think, be no Punishment, nor yet a sufficient Security.

Qu. Will the Law oblige the V. C. and what Means does it afford to enforce him to observe the Statutes of the University relating to the present Case?

The Laws of *England* might justly be charged with a shameful Defect, if they afforded no Remedy against any Officer or Judge who should misbehave himself in his Place, either by acting wrong, or by refusing to act at all; But they are clear of this Charge in the present Case at least.—If any Information be moved for in the Court of King's Bench, the Judges of that Court will grant it, after Cause shewn, against the V. C. to oblige him to proceed against the Offender agreeably to the Statutes of the University: And it is my Opinion, that an Information would certainly lie in this Case; for there is a wide Difference between the Case, where the V. C. (as in effect in the present Case) should refuse to act at all accord-

ing to the Statutes, and where, acting according to a discretionary Power given him by the Statutes of the University, he should not make quite so good a Use of that Discretion, as to one's natural Judgment it should seem that he ought.—In the latter Case, the Temporal Courts would never interfere nor abridge the Liberty allowed the V. C. by those Statutes, to which the whole Corporate Body have subscribed: And what Fault may be found in the V. C. in the Case supposed, may be imputed to the Legislature for leaving him such a Latitude, but no Remedy would lie against *him*. However, no such Reasons appear in the principal Case.

Any particular Member of the University may move for an Information; this being an Action popular, and the Party is said to sue *tam pro Domino Rege quam pro seipso*.

Qu. May not the present Offender be indicted for a Misdemeanour at least, tho' not for S——y itself?

He may.—For every Action that violates or breaks in upon the good Order of Society, as established by Laws, subjects the Party committing it to the Censure of those Laws one Way or other: For Laws are idle, if they do not punish or prevent an Infringement upon that Regularity, which they pretend to establish: And it is not the *Intention* of an open Offender which human Laws consider of, nor will

will they ever question him concerning it. *Actions* only are what they look upon, and punish them when they appear prejudicial to the Order of Society.

Qu. Will it be more adviseable to prosecute the Offender himself after a legal Manner, or to enforce the V. C. to proceed against him according to the Statutes of the University?

If the V. C. was obliged by the Statutes of the University to lay the Matter in Dispute before the Convocation (as if former Precedents [*viz.* Warden of *Wadham*, &c.] move any thing, I should think he is, or, at least, he may do so if he pleases) I should then have no doubt within myself in what manner to advise. But I am apt to conceive, as yet at least, that the Statute *B.* as to Part of it, is still in Being, and therefore the V. C. if he will be strict, may, by Virtue thereof, for the Reasons specified above, claim to himself an exclusive Jurisdiction. However, I will consider the Statute still further.

The Words are, *Quod si per Modum Purgationis procedere non libeat, Cautionem tamen fidejussoriam*, &c.—By which Words, it may be objected, the V. C. had a Power to act in the Alternative, *viz.* either by Way of Purgation, or (if he saw Reason, of which he was the only and proper Judge) by taking sufficient Surety to answer for the Offender's good Behaviour.

viour.—Now, tho' the purgative Oath was once discretionary, and advised not to be administered, *ubi V. C. quempiam in Perjurium ruiturum crediderit aut fontem judicaverit*; and tho' this Discretion, and the Reasons inducing it no longer subsist, but it is now out of the V.C.'s Power *legally* to administer such Oath in *any* Case whatsoever, yet this, one would think, no way prevents his executing the other Part of the Alternative: Tho' *non libet procedere per Modum Purgationis*, for other Reasons at this Day than Statute *B.* specifies, yet what Reason can be assigned, why, for that Cause, the V. C. may not proceed the other Way?—To this it may be answered—As Statute *B.* prescribes the *Cautio fidejussoria*, as it were, conditionally, and expresses it to be taken in two Cases only, *viz.* If the V. C. *quempiam in Perjurium ruiturum crediderit, aut fontem judicaverit*, it thereby makes the taking the said *Cautio fidejussoria* dependent on the happening of one or other of such Cases; so that if they never happen, the *Cautio fidejussoria* can be never taken; two express Cases alone giving Occasion to its being taken at all.

Now, the former of the two Cases cannot happen at this Day, because of the Nullity of the Oath *ex Officio* alluded to: For though a Man may be forsworn, he can never be perjured, unless the Oath be legal, and legally administered: And as to the latter Case, *Si fontem judicaverit*, this too, I suppose, was inserted to prevent Perjury: And if so, where the Reason

son of any Case fails, the Case itself, if depending solely thereon, must fail also. And the Consequence of all is, the Power of taking the *Cautio fidejussoria*, formerly depending on one or other of the above-mentioned Cases as they happened, but which now are extinct, must fall together with them.

Besides, I would just make an Observation on the Words, *Sontem judicaverit*. How shall the V. C. judge a Man guilty, without such an Evidence as would be sufficient to condemn him? What Medium can there be for a Judge, who takes his Evidence in a summary Way according to the Civil Law, between his being justly persuaded of a Criminal's Guilt, and his convicting him? I ask these Questions, because I think the Statute *B.* in its Beginning, speaks as if the V. C. should have nothing to do by *Virtue of that Statute*, except only in Cases of *insufficient* Evidence. And if so, *Quod sontem judicaverit* can be no Case, wherein the V. C. may take the *Cautio fidejussoria* on account thereof.

For the Reasons aforesaid, I apprehend the principal Case in Question is properly cognizable by the V. C. in Convocation only; and, consequently, I am of Opinion, 'tis more adviseable to apply to the Temporal Courts against the V. C. than against the supposed Offender.

8th June, 1751.

This,

This, the Reader may be assured, is a fair and impartial Representation of certain Occurrences, which have lately been the Subject of Conversation in O——d, and the Importance of which hath called for the Attention of the *World*. I repeat my Assertion, affirming it to be a fair Representation, and hereby challenge the *keenest*, the most *designing* and *disinterested* Advocate for the *Man*, by whom the University itself is put to Shame, to point out one single designed Error in this State of a melancholy and deplorable Series of Facts.

To the *Person* of the supposed Offender, and to any the least Degree of Malevolence towards him, I am as absolute a Stranger, as, from my Soul, I wish he was to the Community on which he has drawn so shocking a Disgrace. It is *for* O——d, and not *against* the *Man*, that I venture upon the Stage: I was once a Member of it, and even now live within the Intelligence of what passes in it; and if, amongst all the busy, active Friends behind the Curtain of this Offender, any one shall be ready to take upon him to inform the *World* in what Particular I have given an unjustifiable Turn to a *Fact*, or carried my Accusation to a Length which reflects Reproach on the Accuser, let such Censor *avow* his Animadversions, and I here solemnly assure him, that my Pen, such as it is, shall afford him an instant Reply; at the Foot whereof he, perhaps, may
read

read a Name, which at present I have my Reasons for concealing.

But I must beg Leave to observe, that the Menaces which have flowed plentifully from the Mouths of Men in Power, and the threatened total Destruction of the Author of any Pamphlet of this Nature, have not had the least Influence to make it anonymous. I can assure such Thunderers of Vengeance, that I am out of the Reach of all Malice; happy in a Fortune which they neither gave me nor can deprive me of; and not subject to any Censure as an Academic. It would be no Manner of Uneasiness to me, if I, at this Time, was a Member of the University: What is offered to the World in these Sheets, carries with it nothing *libellous* or *abusive*; and therefore, as the Venerable House of Convocation would be the proper Judges of me, if a Member, I should rather hope for their Patronage for what I have published, in Defence of the University and its Discipline, than dread any Censure from a Body of Gentlemen, who would scorn to be governed by the Pique or Partiality of a Few in Power.

I cannot but make one Observation more, relative to the Proceedings had, in one particular Part of the Affair I have been upon, and with which it is my Intention to have done with this Subject.

Since the few Men of a proper Spirit (and I am really surpris'd they were so few) who

G

thought

thought themselves obliged to unite in a decent Remonstrance to the V—— C——, for a *solemn* and *public* Inquiry into Offences *contra Bonos Mores*, have, by the *indecent* Arts and *Management* of certain *Skreeners*, been represented as Disturbers of the Peace of the University, and as *insolent*, mutinous Intruders upon the Office of the Principal Magistrate, it is to be hoped, that the Reader is, by this Time, well satisfied, that the *Remonstrants* were very far from acting out of Character on that extraordinary Occasion : At least, he must permit the Gentlemen concerned in these *Measures* openly to declare, that they do avow, and will abide by the Remonstrance ; conveying, however, no Sort of Censure (unless their *Compassion* is such) on others, who made no Scruple of speaking their Opinion, that *Public Justice ought to take place*, and yet, by a marvellous Method of Reasoning, absolutely refused to bear a Part in legal and laudable Measures, calculated for the Promotion of what even *they* would be thought to *desire*, and what the *actual* Remonstrants *are* labouring to obtain through Discouragements, which heighten the Honour of their Labours.

Having thus made the most serious and impartial Inquiry I could into the Method of the late Proceedings in Vindication of the University of O——d's Honour and Reputation, relative to an Offence of a certain Member

ber of the same; and having fairly represented all the Facts which occurred to me concerning the said Offence, and considered how far, according to the *Canon, Civil, Common, Statute, and Academic* Laws, the said Offender has been properly or improperly punished,—I shall now entirely quit the Subject, and, without any Relation to the University of O——d, or its Members—shall cursorily inquire, whether there are not some particular Resolutions, which honest Magistrates, presiding over Corporate Bodies, will think themselves in Conscience bound to maintain, and, as far as they can, to regulate their Conduct by during their Administration. Discretion and Integrity are Points very necessary in every Magistrate, for the Preservation of the Credit and Reputation of the Body Corporate, over which it may be his Fortune to preside.

“ Should he proceed *injuriously* in any particular Point, the Iniquity of it does not consist merely in the Crimes of which he may be guilty, nor in the immediate Consequences of them. He sins against *Posterity*, as well as against his *own Age*, and the Consequences of his *Example* will survive, when the Consequences of his Crimes are over.” ’Tis not only the *present* therefore, but the *future* Good likewise of his Community, which an honest Magistrate will always have in his View. Should any delusive

Application be made to him by Men in Power, in order to gratify any selfish View or *Party-Folly*, if he sticks to the essential Principles of an *honest* Magistrate, he will suffer no Offender to be thus artfully stolen away from the Rod of Justice: Those noisome Insects may, for a while, buzz about his Ear, but his Eye will be steadily fixed upon Equity, the impartial Exercise of Justice: The Sword is in his Hand, and he will not sheath it till the Offender has felt the merited Smart of it.

“ Clemency is allowed to be an amiable
 “ and shining Quality: But, in order to pre-
 “ serve it as a Virtue, we are told, it must be
 “ kept within Limitation. And those Bounds
 “ within which it is kept, will equally oblige
 “ him not to be too easy to *pardon*, as not to
 “ be too rigid in *Punishment*.”

In the Behalf of any gross Offence against the Public-Weal, the *honest* Magistrate will suffer no Spirit of *Party* to prevail against *Justice*. If Complaints be legally made of Offences, he will apply his Judgment, attended with his Integrity, to punish them legally. He will not, through any secret Instigation, treat such Complainants as so many *Boutefeus*, for requesting or reminding him to make a legal Inquiry into the Offence, and to carry on a legal Prosecution against such Enemies to his Community. He will rather be pleased with their honest Endeavours
 to

to keep up the Dignity of it, and will express his Gratitude, in a becoming Manner, for their well-designed Endeavours, and Readiness to assist him in such a necessary and laudable Enterprize.

Redressing Grievances, and punishing Offenders, he considers very justly as Points of *Duty* as well as *Wisdom*: Without the Performance of *both these* (as far as he has it in his Power) he cannot deserve that Character, which I would wish every Magistrate to have.

Under a criminal Remissness, he knows, Knavery will flourish: And a Viper, not crushed in the Shell, by Warmth and Encouragement, may poison that Body, from whose criminal Indulgence he acquired his Strength.

Virtue, he is satisfied, cannot be kept in Countenance, nor Vice in Awe, when the Rulers of Corporate Bodies shamefully connive at Tendencies to any notorious Crimes. Should Artifice be applied to stop the Current of Justice, or should any Party-Zeal be made use of to corrupt a Magistrate's Sentiments of Integrity, and to prevail with him not to punish a scandalous Violation of the known Laws of the Community, such Umbrage he looks upon as an Invitation to further Iniquity; he wisely concludes, that a timely Amputation of a corrupted Limb, is
the

the best Method to stop a spreading Infection, and to prevent a Mortification's running over the whole Body.

But, *lastly*——The *bonest Magistrate* will consider further, and make a proper Distinction between *true Wisdom* and *Cunning*, which is nothing but the Shadow of it; and, by sticking to a true Principle of Integrity, he will never suffer his Actions to be stained at any Time with so execrable a Blemish.

“ Shuffling and Packing the Cards are
 “ the Virtues only of a cheating *Gamester* ;
 “ but the *fair Dealer* will be most approved
 “ of, and applauded for his Expertness in
 “ playing the Game *well*.” Dissimulation
 and Subtilty, therefore, will be never practised by an upright Magistrate: He will consult no Interest, but that of his Community, nor ever suffer any Passion to stop the Current of Equity. Should he, at any Time, err in the Distribution of Justice, if it was through Inadvertency, he will consider it as a human Frailty; but, when convinced of it, he will not, with any Art, disguise the Correction of such Error. He will remember, that *Subtilty* is not *Wisdom*, and that Acts of Hypocrisy, in a presiding Magistrate, must expose the *Office* as well as the *Man*. The Practice of it (by an eminent Writer) is compared very justly
 to

to the Alloy mingled with pure Ore: " A
 " little will not debase the Metal below
 " its Standard; but, by too much, the
 " Coin loses its Currency, and the Coiner
 " his Credit."

F I N I S.



[22]

to the silver mingled with pure Ore; & A
to the gold not debased and below
the standard; but by too much the
Coin loses its Currency, and the Coiner
his Credit.

COIN

